

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 - - - - - x

5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC.,

7 Debtor.

8 - - - - - x

9 Adv. Case No. 16-01019-scc

10 - - - - - x

11 LEHMAN BROTHERS HOLDINGS INC.,

12 Plaintiff,

13 v.

14 1ST ADVANTAGE MORTGAGE, L.L.C., et al.,

15 Defendants.

16 - - - - - x

17 Adv. Case No.

18 - - - - - x

19 LEHMAN BROTHERS HOLDINGS INC.,

20 Plaintiff,

21 v.

22 GOLDWATER BANK, N.A., as SUCCESSOR TO COMMUNITY BANKS OF

23 COLORADO,

24 Defendant.

25 - - - - - x

1 Adv. Case No. 18-01825-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 SUBURBAN MORTGAGE, INC.,

7 Defendant.

8 - - - - - x

9 Adv. Case No. 18-01839-scc

10 - - - - - x

11 LEHMAN BROTHERS HOLDINGS INC.,

12 Plaintiff,

13 v.

14 IMORTGAGE.COM, INC., et al.,

15 Defendants.

16 - - - - - x

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1 Adv. Case No. 18-01842-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 PMAC LENDING SERVICES INC., individually and as successor by

7 merger to PMC Bancorp, f/k/a Professional Mortgage Corp.,

8 and as successor by merger to Reliant Mortgage Company, LLC,

9 PMC BANCORP, f/k/a Professional Mortgage Corp.,

10 individually, Reliant Mortgage Company, LLC, individually,

11 Defendants.

12 - - - - - x

13 Adv. Case No. 19-01018-scc

14 - - - - - x

15 LEHMAN BROTHERS HOLDINGS INC.,

16 Plaintiff,

17 v.

18 NETWORK FUNDING L.P., et al.,

19 Defendants.

20 - - - - - x

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24

25

1 Adv. Case No. 19-01020-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 THE CROSSFIRE FINANCIAL NETWORK, INC.,

7 Defendant.

8 - - - - - x

9

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

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14 June 19, 2019

15 10:11 AM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: TENILLE

1 HEARING re Adversary proceeding: 16-01019-scc Lehman
2 Brothers Holdings Inc. v. 1st Advantage Mortgage, L.L.C. et
3 al Pre-Motion Conference

4
5 HEARING re Adversary proceeding: 18-01754-scc Lehman
6 Brothers Holdings Inc. v. Goldwater Bank, N.A., as
7 successor to Community Ba Pre-Motion Conference

8
9 HEARING re Adversary proceeding: 18-01825-scc Lehman
10 Brothers Holdings Inc. v. SUBURBAN MORTGAGE, INC.
11 Pre-Motion Conference

12
13 HEARING re Adversary proceeding: 18-01839-scc Lehman
14 Brothers Holdings Inc. v. Imortgage.com, Inc. et al
15 Pre-Motion Conference

16
17 HEARING re Adversary proceeding: 18-01842-scc Lehman
18 Brothers Holdings Inc. v. PMAC Lending Services, Inc.,
19 individually and as s Pre-Motion Conference

20
21 HEARING re Adversary proceeding: 19-01018-scc Lehman
22 Brothers Holdings Inc. v. Network Funding L.P. et al
23 Pre-Motion Conference

24
25

1 HEARING re Adversary proceeding: 19-01020-scc Lehman

2 Brothers Holdings Inc. v. The Crossfire Financial Network

3 Inc. Pre-Motion Conference

4

5 HEARING re 08-13555-scc Lehman Brothers Holdings Inc.

6 Doc #59614 Motion for an Order Enforcing the Modified Third

7 Amended Joint Chapter 11 Plan of Lehman Brothers Holdings

8 Inc. and its Affiliated Debtors for Purposes of

9 Distributions filed by Rex Wu

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25 Transcribed by: Sonya Ledanski Hyde

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1 ALSO PRESENT TELEPHONICALLY:

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3 TRACY HENDERSON

4 AARON MALO

5 MICHAEL KIEVAL

6 JASON SANJANA

7 ENZA BODERONE

8 KENNETH DUVALL

9 PHILIP STEIN

10 CHRISTOPHER LAVOY

11 AMJAD KHAN

12 REBECCA RODRIGUEZ

13 LILIT ASADOURIAN

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1 P R O C E E D I N G S

2 THE COURT: Who's here who has a letter filed on
3 the docket? I've got LoanDepot, Network Funding.

4 MR. LAVOY: Yes.

5 THE COURT: Who's here representing LoanDepot?

6 MR. LAVOY: Good morning, Your Honor. Chris LaVoy
7 on behalf of LoanDepot.

8 THE COURT: Okay. All right. So let's look at
9 that one first. And Mr. LaVoy, you sent a letter dated May
10 13th that asks to bring a motion to dismiss with respect to
11 successor liability. Plan administrator says that they have
12 sufficiently alleged successor liability. So have you folks
13 spoken to each other?

14 MR. LAVOY: We have not, Your Honor.

15 MR. KUEHN: Not since the letter, Your Honor.

16 THE COURT: Okay. So why don't -- why don't we
17 hear from the plan administrator your -- to the extent that
18 you have kind of a granular description of what's the basis
19 of your belief that there is successor liability here?

20 MR. KUEHN: Certainly, Your Honor. LoanDepot's
21 arguments primarily are based on the claims that the
22 Delaware Supreme Court hasn't recognized mere continuation
23 and that we haven't alleged sufficient fraudulent intent to
24 show a de facto merger.

25 THE COURT: Mh hmm.

1 MR. KUEHN: However, while the Delaware Supreme
2 Court has not explicitly recognized a mere continuation, the
3 lower courts have, and there's no indication that the
4 Supreme Court will not.

5 Secondly, Delaware law, as we set out in our
6 letter, does not require fraudulent intent to show a de
7 facto merger. And then if you look at the factual
8 descriptions in our complaint, which are found at Paragraphs
9 42 to 53, they're extensive. Not to say that the
10 allegations in our complaint are necessarily sufficient to
11 prove --

12 THE COURT: Understood.

13 MR. KUEHN: -- these elements, but there's
14 certainly enough to survive a motion to dismiss. It just
15 doesn't seem like a good use of our time to be briefing this
16 now before discovery.

17 THE COURT: Okay. Mr. LaVoy?

18 MR. LAVOY: To clarify, Your Honor, with respect
19 to the de facto merger theory, one element of our argument
20 is that the fraud component has not been adequately pled.
21 And the caselaw is -- some cases appear to require a fraud
22 allegation or a fraud component to establish de facto
23 merger. But we don't believe other elements necessary to
24 establish de facto merger inadequately alleged in the
25 complaint, so it's not isolated to the fraud element.

1 And then with respect to the companion mere
2 continuation theory for successor liability, as opposing
3 counsel pointed out, there have been open questions
4 regarding whether the Delaware Supreme Court would recognize
5 this theory of successor liability. At least one court has
6 held that it would not, and we believe it would be
7 beneficial to have this threshold issue resolved at the
8 outset to determine whether there's any mere continuation
9 theory to proceed with for LBHI.

10 THE COURT: Okay. Thank you, Mr. LaVoy. How many
11 loans are at issue here? Do you know?

12 MR. KUEHN: I don't know offhand.

13 MR. LAVOY: I'm --

14 THE COURT: Mr. LaVoy, do you know?

15 MR. LAVOY: I didn't hear you. I apologize, Your
16 Honor.

17 THE COURT: I'm sorry?

18 MR. KUEHN: He didn't hear you, Your Honor.

19 MR. LAVOY: I didn't hear.

20 THE COURT: My question is do you know how many
21 loans are at issue here, your client's loans?

22 MR. LAVOY: I do not -- I do not know the exact --
23 I do not know the exact number. I believe the value of the
24 numerous loans on the RMBS side is in the 20- to 30-million
25 range.

1 MR. KUEHN: That's correct, Your Honor. It's 27.6
2 million.

3 THE COURT: Okay.

4 MR. KUEHN: Is the principle.

5 THE COURT: All right. Thank you. All right.
6 Well, based on what you've said, you obviously don't agree.
7 I will -- I will simply say that there hasn't been a very
8 good track record which -- with respect to these motions,
9 but I'll give you the ability to file it.

10 So let's go through the other ones, and I want to
11 see if there are any efficiencies that we -- can be gained
12 to the extent that others who've made this request ought to
13 be on the same timeframe. So thank you, Mr. LaVoy.

14 The next letter is on behalf of Network Funding.
15 Mr. Kieval?

16 MR. KIEVAL: Yes, Your Honor. This is -- yes,
17 Your Honor. Michael Kieval on behalf of (indiscernible)
18 defendants.

19 THE COURT: Okay. All right. So this is a --
20 this is a different basis. This has to do with whether or
21 not a release contained in a prior settlement is applicable
22 here such that it would preclude the claims that LBHI has
23 filed. And Lehman points out that the settlement that
24 you're talking about relates to different loans than the
25 settlement -- than what was at issue in the previous

1 settlement, and therefore the release does not apply.

2 MR. KUEHN: Yes, Your Honor. Not only does it
3 relate to different loans, but it precedes by almost a
4 decade the estimation here in the settlement. So it simply
5 doesn't apply.

6 THE COURT: Well, I don't know that those two
7 things are necessarily true. In other words, the
8 settlement, as we all know, under my view of the law -- and
9 the settlement gave rise to indemnification claims.

10 MR. KUEHN: Correct.

11 THE COURT: Okay. So whether or not a prior
12 settlement could borrow those claims is a separate question
13 from whether or not these are different loans.

14 MR. KUEHN: Correct, but it's both the different
15 loans, the language of the settlement agreement, and the
16 time the settlement agreement was entered.

17 THE COURT: Okay. Well, all -- okay. I was just
18 taking issue with that narrow statement that you made.

19 So Mr. Kieval, have you had a chance to consider
20 what the plan administrator has pointed out?

21 MR. KIEVAL: Yes, and we've discussed this with
22 them previously, and there are a few issues. First of all,
23 we believe that the language of the release itself does
24 cover it. There are two parts of the release. There's a
25 release of unknown claims arising from events that gave rise

1 to the litigation, so that's -- we do believe that it comes
2 under that.

3 But broader than that, the issue here is this was
4 a settlement that merged into a judgment under Texas law,
5 and the Texas law treats preclusion fairly broadly in these
6 contexts. And so we would argue that there is a -- that to
7 the extent that -- basically that there's a subject matter
8 -- when the judgment on dismissing their claims based on the
9 settlement was entered, that it had a much broader effect
10 than the language of the release because it's not simply
11 about the release.

12 But it goes on to -- there's another issue, and
13 one that the administration doesn't address at all in their
14 letter, which is the issue that there is a merger clause and
15 that the merger clause supersedes all previous agreements.
16 And therefore, to the extent that they're suing under the
17 same agreement, those agreements no longer exist and are no
18 longer binding on my client.

19 THE COURT: Okay. Well, I'm not going to do the
20 merits on this basis. I'm not particular persuaded by, at
21 this point, by any argument that based on Texas law the
22 analysis would be any different. Either the release relates
23 to this and it covers it or it doesn't.

24 I think that I've got some selective quoting of
25 the documents back and forth to me, and you're just going to

1 have to brief it.

2 So we're going to -- at the conclusion of this
3 morning session, we'll come up with a briefing schedule.

4 All right?

5 MR. KIEVAL: Thank you, Your Honor.

6 THE COURT: Okay. Okay. The next letter is PMAC
7 Lending Services.

8 MR. KHAN: Yes. Good morning, Your Honor. This
9 is Amjad Khan representing PMAC and then also PMC Bancorp
10 and Reliant --

11 THE COURT: Okay.

12 MR. KHAN: -- for which you received letters as
13 well.

14 THE COURT: Okay. So your letter raises both the
15 statute of limitations issue and the successor liability
16 issue.

17 MR. KUEHN: Yes, Your Honor.

18 MR. KHAN: Yes, Your Honor.

19 THE COURT: So Mr. Khan, are you aware of the
20 extensive procedural history that exists with respect to the
21 statute of limitations issue in this court and elsewhere?

22 MR. KHAN: Yes, I'm keenly aware of it, Your
23 Honor, and I am also aware of Your Honor's ruling in the
24 Universal Mortgage case. I -- but I do believe that the
25 facts of our case are unique in several ways. And if Your

1 Honor can indulge me for a minute, I can explain why.

2 THE COURT: No, I don't -- I'm not going to
3 indulge you for a minute. If you --

4 MR. KHAN: Well, I -- what I mean to say is that
5 --

6 THE COURT: Excuse me.

7 MR. KHAN: -- there's a judgment --

8 THE COURT: Excuse me.

9 MR. KHAN: -- in our case.

10 THE COURT: Excuse me. To the extent that you
11 believe that you will be successful in convincing me that
12 the claims are time barred, you can make a motion. I am not
13 -- I am telling you, and I've said it repeatedly, I'm not
14 going to, from scratch, redo what I have done multiple
15 times. So you can make your motion and I'll rule on it, but
16 the ruling may simply say, for the reasons stated in my
17 previous ruling, and see also the statements made by the
18 district court in declining the request to appeal my
19 previous ruling.

20 So, you know, you're entitled to due process.

21 You're entitled to establish why -- you know, at least to
22 have some ruling from this court as to whether or not that
23 statute of limitations ruling applies to you.

24 MR. KHAN: Understood, Your Honor.

25 THE COURT: But you ought to go through it very

1 carefully because there continues to be a disconnect in how
2 folks are reading the Tenth Circuit decision and the way
3 that I have interpreted it, which I'm not going to be
4 dialing back.

5 So what you're going to have to do though is you're
6 going to have to make two separate motions. You're going to
7 have to make a motion with respect to the Tenth Circuit
8 theory, so to speak, and then a separate motion on the
9 successor liability.

10 MR. KHAN: Understood, Your Honor. May I
11 respectfully raise one procedural point which I think is
12 critical that was raised by Lehman? And this is an
13 important clarification.

14 In Your Honor's amended CMO, Your Honor can see
15 that in Section 2-I, Your Honor permitted threshold motions.
16 Any defendant would reserve with a supplemental or
17 additional complaint to any threshold motion, and so Lehman
18 argued that 2-E governs the situation for our defendant, but
19 I want to make it very clear that we are listed in Exhibit
20 4, all of our clients. And so the letter brief that was
21 actually filed -- letter response that was filed by Lehman
22 with respect to the letters that we raised on May 13th are
23 not actually permitted under Section 2-I.

24 And I raise it only because this is an important
25 procedural point that I think it governs LoanDepot and

1 Reliant, PMAC, and PMC where Your Honor permitted any
2 threshold motion. And Lehman seems to think that we are
3 governed by 2-E, which is a supplemental brief process.

4 THE COURT: Okay. It's really -- it's not worth
5 talking about. You're going to make your motion.

6 MR. KHAN: Yes. I --

7 THE COURT: Right?

8 MR. KHAN: -- just wanted to point that out.

9 That's fine, Your Honor. Yeah.

10 THE COURT: What -- am I missing something?

11 MR. KHAN: No.

12 THE COURT: Okay. So you're going to make your
13 motion, and we'll -- when we get to the end, we'll figure
14 out a way to establish a briefing schedule. If not today,
15 then in some relatively coordinated fashion.

16 Okay. So Mr. Khan, that -- we've covered your
17 other letter as well; have we not?

18 MR. KHAN: You have, Your Honor, with your -- with
19 your observations.

20 THE COURT: Okay.

21 MR. KHAN: I think that covers both letters.

22 THE COURT: Okay.

23 MR. KHAN: Thank you.

24 THE COURT: All right. Just to make that clear,
25 so that's also with respect to the second letter that you

1 filed. Okay.

2 So just for the record, that was PMAC Lending
3 Services and PMC Bancorp. Okay.

4 So that brings us to Crossfire Financial Network.
5 Is anyone here --

6 MS. RODRIGUEZ: Yes.

7 THE COURT: Yes.

8 MS. RODRIGUEZ: Good morning, Judge. Rebecca
9 Rodriguez from GrayRobinson on behalf of Crossfire Financial
10 Network.

11 THE COURT: Okay. All right. So Ms. Rodriguez,
12 you have two different matters that you raise. One is a
13 release issue, and one is a motion to transfer venue.

14 MS. RODRIGUEZ: Correct, Judge.

15 THE COURT: Okay. Are you -- are -- have you
16 familiarized yourself with the decisions that were rendered
17 within other -- in many other cases requesting a venue
18 transfer?

19 MS. RODRIGUEZ: Yes, Your Honor. I've researched
20 your opinions in prior adversary proceedings related to this
21 bankruptcy on that issue.

22 THE COURT: And you think it would be worthwhile
23 to move the transfer venue?

24 MS. RODRIGUEZ: Well, for a limited reason,
25 potentially yes, Judge. There might be a benefit to

1 extension here. So the Florida judge who presided over one
2 of the Crossfire cases with Aurora Bank could interpret and
3 determine the scope and application of the settlement
4 agreement because Crossfire and Aurora settled three
5 lawsuits. And the settlement agreement between those two
6 entities states that it's to be interpreted under Florida
7 law.

8 So for that very limited reason, I thought there
9 might be a potential benefit to having this matter
10 transferred back to the Florida judge for the Florida judge
11 to determine whether that settlement agreement under Florida
12 law should extend to subsequent matters based on the
13 language of the release.

14 MR. KUEHN: Your Honor, we disagree, obviously.
15 First of all, as to the merits of the settlement agreement
16 itself, as we pointed out in the letter response,
17 Crossfire's letter omitted key language from the release
18 which limits the extent of the release to matters that are
19 relating to or arising from the judgments. Those judgments
20 relate to individual loans that are not the loans at issue
21 in the adversary proceeding, clearly unrelated. We don't
22 think there's any --

23 THE COURT: All right. So hold on. So, Ms.
24 Rodriguez, do you have a response to that?

25 MS. RODRIGUEZ: Yes, Judge. The release language

1 under Florida law applies to subsequent matters between the
2 parties and, if I can pull it, the language itself --

3 THE COURT: So if there were -- if there were a
4 slip-and-fall claim, it -- your view of the prior release
5 was that it would cover it and preclude that?

6 MS. RODRIGUEZ: No. If it was related to the loan
7 purchase agreement, which was the subject matter of those
8 lawsuits, then yes.

9 MR. KUEHN: If it had --

10 MS. RODRIGUEZ: Aurora sued Crossfire in Colorado
11 and in Florida alleging that they're the successor to the
12 loan purchase agreement that's now at issue in this lawsuit.
13 And when the parties negotiated a resolution of those suits,
14 it included this very broad release language, which contains
15 language like whether known or unknown, and it applies to --
16 it applies to any successors or assigned to party's
17 hereafter can, shall, or may have (indiscernible) equity.
18 And it's very broad language. And because that settlement
19 agreement has to be interpreted under Florida law, because
20 that's what the parties agreed to, that language is very
21 favorable to Crossfire in this instance, particularly
22 because three of the five loans --

23 THE COURT: Okay. Ms. Rodriguez, hold -- Ms. --
24 please. I'm not interested in a full argument on the
25 merits. Okay? I understand what your plan is. All right?

1 Okay.

2 I don't see any way around having to brief this.

3 I have yet to grant a motion for a change of venue. I would
4 encourage you to think carefully about whether or not you
5 think that that's worth doing. I can interpret Florida law
6 as well as anyone else, and I really would like to have this
7 proceed as efficiently as possible.

8 But on the language -- on the motion with respect
9 to the release, we're just going to have to have full
10 briefing because I can't -- I can't piecemeal determine
11 whether or not one or the other of you is giving me the
12 correct view of the release. I mean, I know that these
13 releases refer to LPAs, whether or not it says what you say,
14 Ms. Rodriguez, or whether it says what the plan
15 administrator says. We'll just have to determine.

16 How many loans are at issue on this one; do we
17 know? Or notional value?

18 MR. KUEHN: (Indiscernible) tell you quickly.

19 MS. RODRIGUEZ: It's five loans, and it's a -- the
20 payment in total is a little over \$1 million.

21 THE COURT: Okay. All right. If you would stand
22 by, Ms. Rodriguez, for us to have the scheduling discussion.
23 We're almost done.

24 MS. RODRIGUEZ: Thank you, Judge. And I will
25 (indiscernible) my client on your guidance and

1 recommendations on the venue issue. I will discuss it.

2 THE COURT: Okay. I wouldn't characterize it as
3 recommendation so much as an observation. All right?

4 MS. RODRIGUEZ: Understood. Thank you, Judge.

5 THE COURT: Thank you.

6 All right. So that brings us up to Goldwater Bank
7 as successor to Community Banks of Colorado.

8 MS. PETRAKOV: Good morning.

9 THE COURT: Hello. Thank you for being here in
10 person.

11 MS. PETRAKOV: I'm Albena Petrakov, Offit Kurman,
12 on behalf of Goldwater.

13 THE COURT: Yes. So this is a successor liability
14 issue. You state in your letter, Ms. Petrakov, that this
15 lack of specific allegations reflects Plaintiff's failure to
16 engage in any reasonable investigation of facts. Had LBHI
17 done so, it would have discovered that Goldwater bank is not
18 a successor to Community Banks of Colorado. Community Bank
19 entered receivership. A small subset of assets was
20 transferred, etc.

21 So have you had a chance to speak to each other?

22 MS. PETRAKOV: We had a brief chance to talk with
23 Mr. (indiscernible), and I have provided some documentation
24 to show that Affiliated Financial Group LLC, which is a --

25 THE COURT: Mh hmm.

1 MS. PETRAKOV: -- (indiscernible) owned subsidiary
2 of Goldwater Bank, purchased a small subset of assets in
3 2009, before the receivership.

4 THE COURT: Mh hmm.

5 MS. PETRAKOV: And we agreed to disagree. We
6 haven't reached any common solution. I don't think that the
7 mere -- the de facto merger or continuation exceptions apply
8 to the extent CBC continues to exist after the purchase. I
9 don't think there could be a de facto merger under Colorado
10 law, which is going to be the active law.

11 And with respect to the continuation, under
12 Colorado law, to establish continuation, you need to prove
13 continuation of the company or the entity, meaning same
14 shareholder interests or officers and directors, not
15 continuation of the business operations.

16 As (indiscernible), we think that neither
17 Goldwater Bank nor the subsidiary belong in this case.

18 THE COURT: Okay. Thank you. This seem -- this
19 one seems a little different than the other ones.

20 MR. KUEHN: I -- it is, but it flags the same
21 issue that we face that we face in many of the successor
22 claims, and that is that the documents, facts, the
23 information is primarily in the hands of the defendants. We
24 can do our diligence. We can search the public record. But
25 unless it's a, you know, a publicly traded company, unless

1 it files with the SEC, there's limited diligence there.

2 There's limited information that we can get from the public
3 record. And --

4 THE COURT: But in this situation -- I don't
5 disagree with that, but in this situation, Ms. Petrakov
6 seems to have supplied you, just in this letter, with a
7 bunch of facts and seems to me to be willing to give you
8 more facts.

9 MR. KUEHN: If we can -- pardon me.

10 THE COURT: Yeah.

11 MR. KUEHN: If we can engage in discovery before
12 the motion is filed, that would make sense. We're happy to
13 address the motion once --

14 THE COURT: Well, I don't want to use the word
15 "discovery." I would like to use the word "diligence."

16 MR. KUEHN: Diligence.

17 THE COURT: I don't want to -- we're not going to
18 do --

19 MR. KUEHN: So --

20 THE COURT: I think it kind of defeats the purpose
21 to be doing discovery, which is litigation. I think that
22 you are limited. You only know -- you only can know what
23 you know, but you have somebody here who's willing to give
24 you information. Once you have the information, if you --
25 if you still agree to -- if you disagree, you're going to --

1 the motion's going to have to move forward and we'll have to
2 deal with it then.

3 But right now, it seems like just in this letter
4 there's a bunch of information that you ought to take some
5 time to evaluate and figure out whether you want to pursue
6 this or whether you need to amend.

7 MR. KUEHN: That's fine. As long as we can
8 exchange information and continue to discuss before motions
9 are filed, that would make sense.

10 THE COURT: Okay. All right. So Ms. Petrakov,
11 you're willing to do that?

12 MS. PETRAKOV: Absolutely.

13 THE COURT: Following up on what you just said.

14 All right. So for this one, I'm not going to ask
15 you that arrive at a briefing schedule today. I'm just
16 going to ask that, as promptly as practicable, you exchange
17 information. Keep talking to each other. If you get to an
18 agreement, I'll see a voluntary dismissal or something on
19 the docket. If you don't, then let us know and come up with
20 a briefing schedule.

21 MS. PETRAKOV: Thank you, Your Honor.

22 MR. KUEHN: Thank you, Your Honor.

23 THE COURT: All right? Okay. Very good. Thank
24 you, Ms. Petrakov.

25 Okay. So is that -- that covers all of the letter

1 requests except for Ms. Adler.

2 MS. ADLER: Right.

3 MR. KUEHN: Correct, Your Honor.

4 THE COURT: So Ms. Adler's in a category of her
5 own. So let's come on up, but let's --

6 MS. ADLER: Good morning, Your Honor.

7 THE COURT: Good morning.

8 Yeah, so do we want her tried with everyone -- you
9 have her on the phone. We want to try to gather a set of
10 briefing schedules for the other motions to dismiss, or do
11 you want to take that offline and see what -- how you can do
12 that? I'd like them all to be on relatively the same track
13 so that I can achieve any efficiency that might be
14 available.

15 MR. KUEHN: I think it's probably something that
16 we can accomplish offline --

17 THE COURT: Okay.

18 MR. KUEHN: -- and send you a letter in the next
19 day or so.

20 THE COURT: Okay. All right. So folks on the
21 phone, I think that makes sense so I don't have to keep
22 other folks in the courtroom waiting. So why don't you work
23 on a briefing schedule sooner rather than later?

24 And the issues are not extensive, so I don't need,
25 you know, bunches of affidavits and 30-page briefs and

1 whatnot. But see if you can work something out.

2 MR. KUEHN: Yes, Your Honor.

3 THE COURT: All right. And then in terms of a
4 hearing date, do you want to do that now and then work
5 backward from that? Do you want to pick a hearing date?
6 Because --

7 MR. KUEHN: Sure. We can do that.

8 THE COURT: Because you're here.

9 MR. KUEHN: Yes.

10 THE COURT: So are we looking at July, August,
11 September? You tell me.

12 MR. KUEHN: I would imagine --

13 THE COURT: With a lot of backs and forths.

14 MR. KUEHN: Yeah. I would imagine -- I would
15 imagine August, perhaps September? I don't know how long
16 the defendants are going to need to file their initial
17 motions. Obviously, we've done a lot of work on the -- on
18 our side to prepare.

19 THE COURT: Right.

20 MR. KUEHN: So it shouldn't take too long to
21 respond.

22 THE COURT: Okay. Why don't -- why don't I do
23 this? Instead of making you pick a date, a firm date,
24 today, why don't I tell you what's available in August and
25 what's available in September, and then that can be part of

1 your discussion.

2 MR. KUEHN: Perfect.

3 THE COURT: Okay. All right. So in August, the
4 -- August 12th through 15th I think would be the best choice
5 for August. The prior week I'm out teaching and whatnot.
6 And the end of August always elicits family commitments and
7 picking kids up from camp and whatnot. So we don't want to
8 do that.

9 September is complicated as well. It would have
10 to be the 4th or 5th, which is the Wednesday and Thursday
11 after Labor Day. And then the next -- really the --
12 incredibly, the next available date would probably be in
13 October because of -- I have other commitments and there's
14 the Jewish holidays.

15 So I would love to have the -- the 4th and the 5th
16 look really good to me, of September.

17 MR. KUEHN: Okay. We'll discuss with the
18 defendants and see if we can work out a schedule that lands
19 on the 4th and 5th.

20 THE COURT: Okay. That ought to be doable because
21 that's almost two months out from now.

22 MR. KUEHN: Should be plenty of time.

23 THE COURT: Okay. Just take sure that when you're
24 doing the schedule that the last piece of paper in gets --
25 would get to me no later than August 22.

1 MR. KUEHN: Certainly.

2 THE COURT: Okay? Okay. So if the folks who are
3 on the phone for the first segment want to ring off, you're
4 very welcome to. You can stay onboard if you like.

5 Okay. Ms. Adler.

6 MS. ADLER: Good morning, Judge.

7 THE COURT: Good morning. How are you?

8 MS. ADLER: I am good. It's nice to see you,
9 Judge.

10 THE COURT: Is it really?

11 MS. ADLER: Yeah. Yeah. It's been a while. It's
12 been a while. I try to stay out of trouble --

13 THE COURT: Okay.

14 MS. ADLER: -- when we're not -- we're not here.

15 THE COURT: Very good. So you filed a letter.

16 MS. ADLER: We filed a letter following the filing
17 of the motion to dismiss, obviously.

18 THE COURT: Right.

19 MS. ADLER: And the motion to dismiss is based
20 wholly on Your Honor's decision.

21 THE COURT: So this is a fascinating -- this is
22 fascinating to me. What you're telling me in the letter is,
23 based on my decision on subject matter jurisdiction, I'm now
24 going to dismiss these cases.

25 MS. ADLER: I think you might, Your Honor.

1 THE COURT: Can you tell --

2 MS. ADLER: I think you should.

3 THE COURT: Tell me how I'm going to do -- why I'm
4 going to do that.

5 MS. ADLER: Because as I understood Your Honor's
6 GSE subject matter jurisdiction argument, I'll call it, Your
7 Honor determined that there was a close nexus because these
8 were prepetition litigation claims that LB -- prepetition
9 contingent, unmatured litigation claims that LBHI had at the
10 time of the bankruptcy filing, prior to the bankruptcy
11 filing, and as to which the plan retained jurisdiction.

12 And I believe that we have put in sufficient
13 document-related facts to show Your Honor, at least with
14 respect to the RMBS claims asserted against the moving
15 defendants, that one of two things are the case. Either any
16 possible claims that Lehman Brothers Bank had were not
17 assigned to LBHI till long after the petition, and in some
18 instances until long after the plan was confirmed and became
19 effective.

20 THE COURT: Okay. So time out.

21 MS. ADLER: Yeah.

22 THE COURT: So let me -- let me stay -- let me
23 stay with you because this was presented in your letter in a
24 very truncated way.

25 MS. ADLER: Right.

1 THE COURT: That's not a criticism.

2 MS. ADLER: We only have two pages.

3 THE COURT: I understand.

4 MS. ADLER: Got it.

5 THE COURT: So what you're saying is that for
6 Fannie and Freddie, the estate had contingent
7 indemnification claims.

8 MS. ADLER: No. I'm saying that we did not
9 discuss the assignment issues in connection with Fannie and
10 Freddie.

11 THE COURT: Okay. But, you see, you're jumping
12 between -- you started with that the -- you're telling me
13 that the premise of my previous decision with respect to
14 subject matter jurisdiction on the Fannie and Freddie claims
15 was the fact that those were prepetition contingent claims.

16 MS. ADLER: Right. That is what Your Honor's
17 concluded were --

18 THE COURT: Well, that -- those are the facts from
19 the ground, right?

20 MS. ADLER: I don't -- actually, Judge, I believe
21 you found those facts. I don't think there is records
22 supporting those facts. I think they're simply allegations
23 in the complaint. So -- and there's nothing very clear in
24 the complaint about when --

25 THE COURT: Well, hold on.

1 MS. ADLER: -- the rights were assigned by Lehman
2 Brothers Bank to LBHI.

3 THE COURT: No, no, no. Don't talk to me about --
4 don't talk about assignments. I'm just talking about that
5 Fannie and Freddie filed huge claims against Lehman,
6 prepetition claims, right? And --

7 MS. ADLER: Fannie and Freddie, yes.

8 THE COURT: Yes.

9 MS. ADLER: That's not -- I'm -- but you're
10 misunderstanding me. My under -- maybe I misspoke.

11 THE COURT: Perhaps you're not explaining it --

12 MS. ADLER: I am sure that's correct, Judge. Let
13 me try again.

14 THE COURT: So, but let me -- let me try this.
15 Fannie and Freddie had huge claims against the estate,
16 right? The estate settled those.

17 MS. ADLER: Correct.

18 THE COURT: Right? And then arising out of those
19 settlements, the estate asserted the downstream claims
20 against, amongst others, your clients.

21 MS. ADLER: That's correct.

22 THE COURT: Okay. Okay. You try because I'm not
23 understanding what you're saying.

24 MS. ADLER: Okay. As I read your GSE subject
25 matter jurisdiction case, and I have read it many times --

1 THE COURT: Okay.

2 MS. ADLER: -- my understanding of your analysis
3 and the reason that you concluded that there was a close
4 nexus sufficient to predicate subject -- related to subject
5 matter jurisdiction was because you state -- and you state
6 it three times -- that LBHI --

7 THE COURT: Mh hmm.

8 MS. ADLER: -- held contingent, unmaturred,
9 prepetition claims against the mortgage originators.

10 THE COURT: Yes.

11 MS. ADLER: Okay.

12 THE COURT: Yes.

13 MS. ADLER: My point is I don't think that's
14 factually accurate. I think that is --

15 THE COURT: You thought I was wrong then or you
16 think I'm not going to be able to say that about the --

17 MS. ADLER: I don't think the record was before
18 you then, so I think it was immaterial. And the allegations
19 in the complaint do not, I think, conspicuously fail to
20 specify when Lehman Brothers Bank, non-debtor Lehman
21 Brothers Bank, assigned its rights, remedies,
22 representations, and warranties to Lehman Brothers Holdings.
23 And --

24 THE COURT: Okay. Now I -- now I understand what
25 you're saying.

1 MS. ADLER: So -- right. So if I --

2 THE COURT: Now I understand what you're saying.

3 MS. ADLER: Okay. I'm sorry if that didn't come
4 across clearly.

5 THE COURT: Without -- no, without -- I'm not --
6 I'm not going to agree or disagree with how --

7 MS. ADLER: I understand.

8 THE COURT: -- you're characterizing the opinion,
9 but now at least I understand what you're saying.

10 MS. ADLER: So the arguments very sketchily in the
11 -- not sketchy arguments but to abbreviate them -- in the
12 motion to dismiss are effectively twofold. One is that the
13 assignment documents available in the public record -- and
14 from submissions --

15 THE COURT: Mh hmm.

16 MS. ADLER: -- that Lehman has filed show that the
17 rights that would give Lehman the ability to -- Lehman
18 Holdings the ability --

19 THE COURT: Mh hmm.

20 MS. ADLER: -- to come after our clients, they
21 didn't get those rights till post-petition.

22 THE COURT: I understand what you're saying.

23 MS. ADLER: Or --

24 THE COURT: Right.

25 MS. ADLER: -- from a more conventional standpoint

1 point of view, which is also, as you know --

2 THE COURT: Mh hmm.

3 MS. ADLER: -- analyzed under 12 B-1 that if
4 Lehman Brothers Holdings purportedly got these rights before
5 it filed its bankruptcy filing, those rights were divested
6 when the loans were sold by Lehman Brothers Holding through
7 SAS Co, through Structured Assets Securities Corporation --

8 THE COURT: That's a different argument.

9 MS. ADLER: To the RMBS trustees.

10 THE COURT: Okay. That's a different argument.

11 MS. ADLER: But they're two prongs in --

12 THE COURT: That's what I call the Goldilocks
13 argument. At one point it was too early, at one point it
14 was too late --

15 MS. ADLER: Right.

16 THE COURT: -- but it was never just right.

17 MS. ADLER: Correct.

18 THE COURT: Okay.

19 MS. ADLER: That's exactly right.

20 THE COURT: Right.

21 MS. ADLER: That is --

22 THE COURT: That's your argument?

23 MS. ADLER: That is the argument.

24 THE COURT: Okay.

25 MS. ADLER: That's correct.

1 THE COURT: All right. So I understand what
2 you're saying now.

3 MS. ADLER: Good.

4 THE COURT: Do you understand what Ms. Adler is
5 saying?

6 MR. KUEHN: I think I do.

7 THE COURT: I know you disagree with it, but do
8 you understand what she's saying?

9 MR. KUEHN: I believe I understand the argument.

10 THE COURT: Okay. So, you know, so you're going
11 to have -- you're going to -- you're going to make this
12 motion.

13 MS. ADLER: Well, if you give us permission to
14 make the motion.

15 THE COURT: Well, I'm --

16 MS. ADLER: We've made the motion to dismiss. Mr.
17 -- Lehman Holdings opposition is due, Mr. Brent just told
18 me, July 12th.

19 THE COURT: Right, but --

20 MS. ADLER: And that'll be fully briefed --

21 THE COURT: Okay.

22 MS. ADLER: -- in August.

23 THE COURT: But -- okay. But I'm not going to say
24 discovery.

25 MS. ADLER: I understand. But the -- I mean, I --

1 THE COURT: What this is only about -- not only,
2 but this is about not whether these cases go on but whether
3 these cases go on here because I can't preside unless I have
4 subject matter jurisdiction.

5 MS. ADLER: Well, that's correct.

6 THE COURT: Right.

7 MS. ADLER: And they or may not go on elsewhere.
8 Who knows? I mean, if you don't have subject matter -- if
9 you don't have subject matter jurisdiction, no one in the
10 Southern District does on a related-to basis, and I don't
11 know if there are other independent bases for federal court
12 jurisdiction and/or, if there were, if there would be
13 personal jurisdiction. With respect to my client, there
14 would not be personal jurisdiction, I don't think --

15 THE COURT: All right. Well, that's --

16 MS. ADLER: -- in the Southern District.

17 THE COURT: That's way beyond what we're going to
18 talk about.

19 MS. ADLER: Right.

20 THE COURT: So, okay. So why don't you have a
21 seat.

22 MS. ADLER: Okay.

23 THE COURT: Thank you for patiently explaining
24 what your -- what your theory was. Okay.

25 MR. KUEHN: So, Your Honor, first of all, before I

1 even get into the merits on their motion to dismiss --

2 THE COURT: Yeah. You don't have to get --

3 MR. KUEHN: -- which I don't think makes sense. I
4 don't think it makes sense here today.

5 THE COURT: That's -- don't make -- don't get into
6 the merits of the motion. I was just -- based on the
7 limited description in Ms. Adler's letter, I wanted to
8 understand what her thinking was. Now I understand what her
9 thinking was, and I'm not saying whether I agree with it --
10 whether I agree with the new theory, whether I agree with
11 the characterization of the previous opinion, none of that.
12 This was simply a request for a stay of discovery, and I'm
13 -- I've had those requests before, and I'm not going to
14 grant it now. So go -- so I don't know that there's that
15 much more to talk about.

16 MR. KUEHN: I don't hint I have anything else to
17 say if you're denying their request to file a motion for
18 stay of discovery.

19 THE COURT: Well, Ms. Adler, do you want to file a
20 formal motion?

21 MS. ADLER: Yeah, we -- I mean, there are -- you
22 know, there's caselaw on when a stay of discovery may be
23 appropriate, and the standards which I specified in the
24 letter are the Court is to consider the -- it is true it's
25 discretionary. It's not automatic, but if the Court doesn't

1 have subject matter jurisdiction and there's good argument,
2 an argument that is quote "not unfounded in the law," and
3 respectfully, it's your argument that we're relying upon
4 here, so I know, you know, it's founded in the law. People
5 should not be going forward.

6 And then the other factors that you consider are
7 the breadth of the discovery sought, the strength of the
8 underlying motion, and the burden, and whether the motion is
9 potentially dispositive.

10 THE COURT: How many -- how many loans are
11 involved in --

12 MS. ADLER: In the moving defendants? From -- on
13 behalf of the moving defendants?

14 THE COURT: Mh hmm.

15 MS. ADLER: Ms. Henderson's on the line, and she
16 can tell you how many are from her clients. Between my
17 clients and counsel representing the other moving
18 defendants, there are about 55.

19 THE COURT: What are the -- where are we in the
20 CMO in terms of moving deadlines for discovery?

21 MS. ADLER: We --

22 THE COURT: Because you're asking me to basically
23 suspend the CMO.

24 MS. ADLER: No, I'm not at all. And I'm -- we're
25 not asking about the GSE because that case is continuing.

1 We're talk about the RMBS --

2 THE COURT: And you're asking me to suspend the
3 CMO with respect to the RMBS.

4 MS. ADLER: Yeah, but there're --

5 THE COURT: The new wave.

6 MS. ADLER: -- 30 defendants. Maybe 20 moving
7 defendants. There are 190-plus other defendants.

8 THE COURT: No, but you're asking me to disrupt
9 the CMO with regard to all those defendants, to suspend the
10 CMO.

11 MS. ADLER: Pending Your Honor's decision on the
12 --

13 THE COURT: Ms. Adler, the effect of that is that
14 the dates in the CMO would be suspended until I decide.

15 MS. ADLER: I actually, Your Honor, well, don't
16 think that it's likely. We're asking for a brief stay
17 pending your decision.

18 THE COURT: But it would -- if it --

19 MS. ADLER: You'll have the papers in August, at
20 the latest.

21 THE COURT: If there -- if there -- if there's a
22 discovery deadline in August, I'm not --

23 MS. ADLER: No, discovery is ongoing. I mean, the
24 parties have exchanged -- and Mr. Kuehn will correct me if
25 I'm wrong -- have exchanged requests for production and

1 interrogatories and their objections to them. There have
2 been -- the only documents that have been produced which
3 were not sort of part of formal discovery were the loan
4 files --

5 THE COURT: Okay.

6 MS. ADLER: -- and the trust documents that Your
7 Honor --

8 THE COURT: So answer me this. What's the next
9 date? I don't want to bother having to rule on a motion
10 where, as a practical matter, there's no effect. If there
11 are --

12 MS. ADLER: Well, we are all -- there's very, you
13 know, the --

14 THE COURT: Could someone answer my narrow
15 question? What is the next operative date in the CMO that
16 would be suspended if I were to agree with you that
17 discovery should be stayed?

18 MS. ADLER: Hold on just a minute, and I will tell
19 you.

20 THE COURT: Do you know, Mr. Kuehn?

21 MR. KUEHN: Substantial completion --

22 MS. HENDERSON: Good morning, Your Honor. This is
23 Tracy Henderson, American Mortgage Law Group --

24 THE COURT: Well, Ms. Henderson, no. No, no, no.
25 Hang in there. I'm going to hear from Mr. Kuehn.

1 MS. HENDERSON: I wanted to ask a question, Judge.

2 MR. KUEHN: The next hard and fast date in the CMO
3 related to document production and discovery is the
4 substantial completion of discovery, of document production
5 on April 13th next year.

6 THE COURT: On April 13th next year?

7 MR. KUEHN: Yes.

8 THE COURT: So Ms. Adler, why are we doing this?
9 What's the point?

10 MS. ADLER: Because, Your Honor, before April
11 13th, everybody is in good faith trying very hard to cull
12 trillions of documents responsive to, you know, what both
13 sides think are very overbroad document requests.

14 THE COURT: Okay. So if you -- if you -- if you
15 do nothing until I rule on this sometime in the fall, you
16 have until April next year.

17 MS. ADLER: No, I would -- theoretically you're
18 supposed to be producing on a rolling basis, and so is every
19 --

20 THE COURT: So just roll slower.

21 MS. ADLER: Well, okay. I mean, I --

22 THE COURT: I mean, this is --

23 MS. ADLER: I think it's --

24 THE COURT: Listen. This is a waste of everyone's
25 time.

1 MS. ADLER: On the contrary, Your Honor. If --

2 THE COURT: There is no effect. If I were to
3 grant a quote, unquote "stay," there is no effect.

4 MS. ADLER: There actually is an effect, Your
5 Honor. Our clients are all spending a whole lot money
6 looking for responsive documents determining what's
7 responsive.

8 THE COURT: Mr. Kuehn, I don't --

9 MS. ADLER: We're not waiting until April.

10 THE COURT: I don't want to have the estate or
11 these parties spend money on a motion for stay of discovery
12 when there is no practical effect of it. What am I missing
13 here? There's not -- there aren't depositions scheduled for
14 next week. There is not a production deadline for next
15 week. You're talking about something that is 10 months
16 away. There is no practical effect to this.

17 MS. ADLER: Well, Your Honor, if we're going to
18 complete discovery by April of next year -- which includes
19 obviously producing documents, answering interrogatories,
20 taking depositions after that --

21 THE COURT: So hypothetically, if I rule on your
22 motions in October -- October, okay. October. November,
23 December, January, February, March, April. That's six
24 months.

25 MS. ADLER: Your Honor, I am totally comfortable,

1 A, if Your Honor can rule in October, and, B, if in front of
2 the Court right now we can all agree that --

3 THE COURT: I'm not --

4 MS. ADLER: -- the moving defendants are not
5 violating any --

6 THE COURT: They should -- moving --

7 MS. ADLER: -- obligations --

8 THE COURT: How about this? The moving defendants
9 shall not be deemed to have violated their obligations under
10 the CMO if between now and the disposition of the motion to
11 dismiss they do not produce any additional documents.

12 MS. ADLER: That's totally acceptable. That's
13 fine with me, Your Honor. Thank you.

14 MR. KUEHN: I mean, that's fine as long as the
15 defendants continue to participate in all the other written
16 discovery that we need to deal with, interrogatories and --

17 THE COURT: What -- but that's what I was asking
18 before. What's the next date for them to do something?

19 MR. KUEHN: Well, they are supposed to start
20 rolling production in late June. I think it's June 25th or
21 26th.

22 THE COURT: Okay, so --

23 MS. HENDERSON: 29th.

24 THE COURT: Okay.

25 MR. KUEHN: 29th.

1 THE COURT: Okay. So here we are 10 days before
2 that. Do you have documents to produce, Ms. Adler?

3 MS. ADLER: I would have by June -- I would have
4 some. I have 50 -- my client has 51 loans. They're a tiny
5 little thing. We have loads of clients, so have we started
6 to look for and go through documents? Indeed, we have.

7 THE COURT: Okay. So if you have documents now,
8 as of today, why don't you just produce them? You just said
9 that you're obligated to make a rolling production. So if
10 you have documents, you should produce them.

11 MS. ADLER: And then, Your Honor, we can stop
12 pending -- stop doing additional --

13 THE COURT: Hold on.

14 MS. ADLER: I'm not averse to producing them. I'm
15 trying to diminish the burden or avoid the burden --

16 THE COURT: You're representing to me that you
17 want to have your clients not have to continue to look for
18 documents. On the other hand, document -- there's a date
19 for production next week. So either people have been
20 diligently looking for documents, or they haven't. You
21 can't have it both ways.

22 MS. ADLER: We have been, Your Honor.

23 THE COURT: Okay. Then if you have documents now,
24 why is it burdensome to produce them?

25 MS. ADLER: Because they're for a couple of loans.

1 MS. HENDERSON: Your Honor --

2 MS. ADLER: I'm happy to produce what I've got.

3 THE COURT: Okay.

4 MS. ADLER: The point is should the burden and
5 expense be ongoing if there is a --

6 THE COURT: Ms. Adler, you are -- okay. We're now
7 beyond the initial phase where I have patience, okay? You
8 are -- if -- to the extent that you want to avoid future
9 burden, that's one thing. To the extent that you have in
10 good faith been acting under the CMO and you have documents
11 --

12 MS. ADLER: I'm --

13 THE COURT: -- today, which you're suggesting to
14 me that everyone's working in good faith and they don't want
15 to be criticized for not having done that, then if you have
16 documents that have been located today, those should be
17 produced. And that should go for everybody.

18 MS. ADLER: That's fine, Your Honor. I'm not
19 objecting to that. I think what we're doing is trying to
20 stop the clock as of today. No one's saying that we
21 shouldn't produce that which we've already collected.

22 THE COURT: Well, it's very unclear that that's
23 not what you would want because you are telling me you don't
24 want to undertake any burden whatsoever.

25 MS. ADLER: Well, yes, going forward. Exactly

1 right. I mean, I'm here making the application to make the
2 motion. I respect that Your Honor thinks that no motion --
3 no motion is necessary given what we've just discussed.
4 But, you know, answering interrogatories is not inexpensive
5 or without burden. There're like 90-some-odd, I think,
6 interrogatories in -- right?

7 THE COURT: What's the date for answering
8 interrogatories?

9 MS. ADLER: The responses and objections are due
10 within 45 days from the time they were served, and they were
11 served on or about May 20 or 22. You'll have to confirm.

12 THE COURT: Look, here's the thing. Okay.

13 MS. HENDERSON: (Indiscernible).

14 THE COURT: CMO -- the CMO was an extensively
15 litigated and negotiated document. There was nothing in the
16 CMO that said -- that talked about any stays of discovery,
17 any ability to modify it for any reason like this. So I
18 would suggest that if you want to make your motion, make
19 your motion. We're going to keep going in the meantime. I
20 told you what my views are. I'll rule on the motions to
21 dismiss, and we can take it from there.

22 MS. ADLER: I'm sorry. So if we want to make --

23 THE COURT: Make a motion.

24 MS. ADLER: Make the motion to stay? Fine.

25 THE COURT: Okay.

1 MR. KUEHN: Your Honor, if I could just make a --

2 THE COURT: Sure.

3 MR. KUEHN: -- couple of final points. I
4 apologize. I just would like to make the point that the
5 Lehman estate, it's not an operating business. It's a
6 liquidating --

7 THE COURT: Oh, they're quite aware of that.

8 MR. KUEHN: It's trying to recover money for its
9 creditors.

10 THE COURT: Yeah.

11 MR. KUEHN: And responding to these motions --

12 THE COURT: I understand.

13 MR. KUEHN: -- it's costly. It's costly and --

14 THE COURT: I understand.

15 MR. KUEHN: -- it hurts our creditors, and, you
16 know, if it's a meritless motion that's going to be a waste
17 of time, it's also a waste of money. And yes, you know, our
18 client has a (indiscernible) fee recovery provisions in the
19 seller's guide --

20 THE COURT: Mh hmm.

21 MR. KUEHN: -- but the problem is we've been told
22 by a lot of defendants when we're discussing resolution of
23 claims that there's no money there. So it's almost a free
24 option when they keep filing motions.

25 THE COURT: Well, that's the part that I've never

1 understood about this. All -- and we've had this
2 conversation countless times. To the extent that defendants
3 say, I have no money, I've said to the plan administrator on
4 repeated occasions, you should follow up on that because
5 it's not worth the plan administrator's time and money
6 pursuing a judgment that you're not going to be able to get
7 satisfied. And then when those conversations begin to take
8 place, all of a sudden, things quiet down because maybe
9 there is money there.

10 MR. KUEHN: Yes, Your Honor.

11 THE COURT: Okay. So I -- you know, I only know
12 what I know. People are going to act in their own economic
13 interest. I believe that one way or another, these cases
14 are going to move forward somewhere and that discovery
15 informs a settlement discussion.

16 So I understand that the defendants continue to
17 seek to avail themselves of every motion that there is. I
18 get that. I've said at the beginning I'm not cutting off
19 anybody's due process rights. That imposes a cost on the
20 plan administrator. It is what it is. I -- there's nothing
21 that I can do about that, you know, within limits.

22 I'm not saying that folks ought to file -- be able
23 to file frivolous motions, and I think that I've done
24 everything that I can to discourage repeat motions and bake
25 into this version of the CMO the ability to pro forma things

1 and simply incorporate by reference previous rulings so that
2 these folks, new folks, were afforded due process and have
3 the benefit of a substantive ruling so that they have their
4 rights preserved for appeal and other matters going forward.
5 That was the whole theory of the new version of the CMO.

6 MR. KUEHN: Absolutely, Your Honor. Absolutely,
7 Your Honor. I just want to be clear that we will be putting
8 in our opposition to their substantive motion, a motion to
9 dismiss --

10 THE COURT: Mh hmm.

11 MR. KUEHN: -- in July. July 12th, I believe, is
12 the date.

13 THE COURT: Okay.

14 MR. KUEHN: And so, you know, you'll see our
15 arguments then on the merits.

16 THE COURT: Right.

17 MR. KUEHN: And you'll see it doesn't make sense
18 to stay discovery at all.

19 THE COURT: Okay. Well, then that's fine. Ms.
20 Adler thinks she has a winning argument both on subject
21 matter jurisdiction and staying discovery, so we'll have to
22 look at it. Okay. I mean, to the extent that your headline
23 argument is going to be that to the extent that Ms. Adler is
24 saying we've got a sure winner on subject matter
25 jurisdiction, I mean, fundamentally you're going to oppose

1 that motion to stay discovery because you think she's wrong
2 on the subject matter jurisdiction.

3 MR. KUEHN: And because there's no additional
4 burden because if we lose on subject matter jurisdiction, as
5 you pointed out, we'll be suing in a different court, and
6 the same discovery will be at issue.

7 THE COURT: Well, Ms. Adler seems to have a theory
8 that Lehman -- that that's not true, that there may be no
9 court that you can sue in.

10 MR. KUEHN: Yes, she does have a new argument on
11 that point.

12 THE COURT: Okay.

13 MR. KUEHN: The standing argument that we'll
14 explain why that's --

15 THE COURT: The Goldilocks argument.

16 MR. KUEHN: The Goldilocks argument. We'll
17 explain why it's simply incorrect. But the primary argument
18 doesn't affect --

19 THE COURT: Okay.

20 MR. KUEHN: -- where the --

21 THE COURT: All right. Well, look. I mean, I had
22 hoped that we would be able to get to a practical resolution
23 of this issue. Maybe that will emerge as we get later, but
24 for now, I'm not going to be in the position of any
25 defendant saying that their rights under federal rules were

1 truncated anyway. So --

2 MS. ADLER: Your Honor, two points. Obviously, we
3 don't agree with the meritless. And also, to the extent
4 that our arguments prevail with respect to subject matter
5 jurisdiction, they probably preclude actions in other
6 courts.

7 But the second point is if indeed Mr. -- Counsel
8 is --

9 THE COURT: Ms. Adler, you just won. You're going
10 to file your motion. Why aren't we done?

11 MS. ADLER: I'm trying to address Counsel's point
12 and your point about the plaintiff's sensitivity to cost
13 issues. So what I was going to propose -- which meshes with
14 something you said earlier, Your Honor -- is that if we wait
15 till we see the arguments on July 12th that Defendant makes
16 and we can do so in evaluating whether we think it makes
17 sense to go forward with the motion to stay without being
18 deemed not in compliance with any discovery obligations, I'm
19 happy to do that. No one wants to make frivolous motions or
20 motions that have no chance of prevailing, obviously, on
21 either side.

22 THE COURT: But the CMO will remain in effect.
23 The deadlines will remain in effect. You can do whatever
24 you believe you're entitled to do. If you want to wait to
25 file your motion till you see their response to the -- to

1 the subject matter jurisdiction motion, you can do that.

2 But I'm not -- I'm not going to suspend any deadlines

3 pending that. You can decide when you want to stay

4 discovery.

5 MS. ADLER: Well, I think -- I understand that

6 Your Honor isn't suspending deadlines. I was going back to

7 a comment Your Honor made a short time ago about because the

8 deadlines are over a period of time that ranges --

9 THE COURT: I'm not going to micromanage whether

10 or not it's okay for your clients to spend one hour a week

11 looking for documents or 10 hours a week looking for

12 documents.

13 MS. ADLER: I understand, Your Honor.

14 THE COURT: You --

15 MS. ADLER: We'll work it out.

16 THE COURT: You folks do whatever you need to do

17 under the order, and I'm not going to conduct an

18 investigation into what you've done. I trust that you'll

19 proceed in good faith.

20 MS. ADLER: Of course. Thank you very much, Your

21 Honor.

22 THE COURT: Okay. So, Ms. Adler, are you and the

23 other similarly lined parties in fact going to wait and see

24 what Lehman's response is?

25 MS. ADLER: I have to speak to Counsel, and

1 they're on the phone, so I don't want to do that --

2 THE COURT: Okay.

3 MS. ADLER: -- obviously right in front of
4 everybody.

5 THE COURT: Would you be so kind, after you've had
6 a chance to confer with Ms. Henderson or whoever else that
7 it is, could you let the plan administrator know --

8 MS. ADLER: Sure.

9 THE COURT: -- what you're going to do?

10 MS. ADLER: Yeah.

11 THE COURT: Just so they can --

12 MS. ADLER: We might try and work something
13 consensual out with them, mirabile dictu.

14 THE COURT: That would be --

15 MS. ADLER: I know, Your Honor.

16 THE COURT: Stranger things have happened.

17 MS. ADLER: Not many, but sure.

18 THE COURT: Not many.

19 MS. ADLER: Sure, Your Honor.

20 THE COURT: Okay.

21 MS. ADLER: Yeah.

22 THE COURT: All right.

23 MS. ADLER: And if we work something out, we'll
24 let you know too.

25 THE COURT: Okay.

1 MS. ADLER: All right.

2 THE COURT: All right.

3 MS. ADLER: Thank you very much, Your Honor.

4 THE COURT: All right. Thank you. All right.

5 MR. KUEHN: Thank you, Your Honor.

6 THE COURT: We're done for this?

7 MR. KUEHN: We are done.

8 THE COURT: We are done. Okay. Thank you very
9 much. Okay. So we're going to roll right into the 11:00
10 calendar. So thank you. Okay. First on the 11:00 calendar
11 is 45th Street Park Avenue.

12 Okay. Could the folks who are here for the 11:00
13 Lehman matter please come up?

14 MR. FAIL: Good morning, Your Honor.

15 THE COURT: All right. Good morning, Mr. Fail.
16 How are you?

17 MAN: Good morning, Your Honor.

18 THE COURT: All right, let me --

19 MR. WU: Good morning, Your Honor.

20 THE COURT: All right. Let me --

21 MAN: Good morning, Your Honor.

22 THE COURT: Okay. Let me see who's on the phone.

23 (Overlapping Voices)

24 MR. GREGORY: Ricky Gregory is present, Your
25 Honor.

1 THE COURT: I'm going to be muting the lines of
2 everyone except for Mr. Wu. And just to make it clear, this
3 is an unusual circumstance in that it's very rare that when
4 a party wishes to make a substantive argument that I allow
5 that to be made telephonically.

6 So, Mr. Wu, we have afforded you that courtesy.
7 It appears that you live in Chicago. That's for today only.
8 And going forward, as is my practice in every case, to the
9 extent that there would have to be any further substantive
10 arguments on this matter or any other, I would expect that
11 you would appear in person.

12 MR. WU: Thank you, Your Honor. I do appreciate
13 it.

14 THE COURT: All right. So, there was a late-
15 breaking slew of documents that hit the docket, many of
16 which I'm just going to put to the side. Although I would
17 note that they -- it appears that people are copying
18 documents from each other and from documents that are on the
19 docket, and that folks are actually copying from the wrong
20 documents.

21 So, you can take a look at what you filed, and I'm
22 sure that if you spend a little time, you'd figure out that
23 you're copying from the wrong documents. So, I'll come back
24 to that point perhaps later.

25 So, with respect to Mr. Wu, there was received by

1 the Court on June 13th a document bearing a June 11th date
2 that styled as a motion to demand service, in which Mr. Wu,
3 you assert that you didn't receive service and you state
4 without any support whatsoever that it's intentionally
5 committed by the debtor.

6 So, we went ahead and pulled the certificate, the
7 affidavit of service, as we do in every case, and it did not
8 appear that your name was on the affidavit of service.

9 So, Mr. Fail, did I miss something in the
10 affidavit of service.

11 MR. FAIL: No, Your Honor. Good morning. For the
12 record, Garret Fail, Weil, Gotshal & Manges, here this
13 morning with my colleague Jason Hufendick.

14 Your Honor is correct. And thank you for giving
15 me an opportunity to point out it was not an intentional
16 omission. It was an inadvertent oversight that Mr. Wu was
17 not served with our objection to his motion, which I would
18 note, and I'm sure Your Honor is aware, is different than if
19 the Debtor, or here, the plan administrator, were the
20 movant. This is simply an objection to his motion.

21 I think, as Your Honor and the Plan Administrator
22 is aware, Mr. Wu did receive actual notice in time to file
23 quite timely in advance of this hearing a substantive
24 lengthy reply.

25 THE COURT: Okay. Let me --

1 MR. FAIL: Nonetheless, Your Honor, we --

2 THE COURT: Let me ask --

3 MR. WU: The reply --

4 THE COURT: Let me ask this --

5 MR. WU: The reply that I filed --

6 THE COURT: Mr. Wu --

7 MR. WU: (indiscernible)

8 THE COURT: Mr. Wu, here's the way it works.

9 You're on the phone. You will --

10 MR. WU: Yes, Your Honor.

11 THE COURT: You're going to get to speak when I
12 ask you to speak. Okay?

13 MR. WU: I understand. And I apologize, Your
14 Honor.

15 THE COURT: All right. Otherwise, everyone's
16 going to be talking over each other. Mr. Wu, my question to
17 you is when did you actually see the objection that had been
18 filed?

19 MR. WU: I saw the objection that was filed
20 shortly after it hit the docket. And that's only because I
21 was looking over the dockets and to make sure I --

22 THE COURT: Mr. Wu, I understand that you weren't
23 served with it. We're not going to dispute that. There is
24 no dispute as to that. My question is what was the date
25 that you actually saw the document as you continued to check

1 the docket? The Plan Administrator's objection was filed on
2 May 29th. So --

3 MR. WU: I don't know the exact date, but it would
4 be around that date --

5 THE COURT: Okay.

6 MR. WU: -- May 29th or May 30th.

7 THE COURT: So, at that moment you knew it hadn't
8 -- or shortly thereafter, it hadn't been served on you.

9 Now, Mr. Fail, when you figured out that Mr. Wu
10 had inadvertently not been served, what did you do, if
11 anything?

12 MR. FAIL: Your Honor, we reached out to Mr. Wu
13 and asked if he would like additional time, and we offered
14 to adjourn this hearing and contact your chambers to work
15 out another date if he needed additional time, wanted to
16 file an additional substantive response. He requested that
17 we proceed today, reserving all of his rights to make
18 arguments today, Your Honor.

19 THE COURT: Okay. So, Mr. Wu, what is it that you
20 -- when the Plan Administrator -- when Mr. Fail reached out
21 to you to say -- to acknowledge the error in service and to
22 offer you an adjourned date so that you could file something
23 substantive, obviously, you didn't take them up on that
24 offer. Why not?

25 MR. WU: When I received the call yesterday, it

1 was a series of three phone calls. We finally spoke, I
2 would say, around 6:00 Eastern time, 5:00 Central time.
3 During that call -- you know, it felt more threatened --
4 threatened than any other meaning to it. So, I just take my
5 --

6 THE COURT: I'm sorry. I cannot understand the
7 word -- I cannot understand you. All I can hear is the word
8 threatened.

9 MR. WU: Right. So, I --

10 THE COURT: Mr. Fail has told me that he called
11 you and said, would you like to adjourn the hearing so that
12 you could file a response, and you apparently said no.

13 MR. WU: Correct.

14 THE COURT: So, what is it that you want to happen
15 today? What do you think -- why -- if you want to respond
16 and he gave you the opportunity to respond, then why are we
17 here today?

18 MR. WU: What I want to respond, what I want to
19 say is stated in my motion, and it's stated on my response
20 to the objection and the demand for service. Everything
21 that I want to say is within the motion.

22 I just want to let Your Honor know and the
23 Honorable Court know that my due process was not honored,
24 and my rights have been violated, and to take that into
25 consideration.

1 THE COURT: Okay. Mr. Wu, we're not going to play
2 games. I understand that you are not represented by counsel
3 and that you're appearing pro se. In plain English, last
4 night Mr. Fail called you and said, you weren't served;
5 would you like more time; we'll adjourn the motion. He
6 offered you the opportunity to not be here today and to file
7 a substantive response to the Plan Administrator's
8 objection. That's due process. That's what it looks like.

9 Now, you apparently said no, you want to be on the
10 phone. So, you have a choice to make. If you don't want to
11 file further substantive papers, we can go forward today.
12 And I'm going to rule on your motion, and that would
13 encompass all of these joinders.

14 But you're not -- you can't have it both ways.
15 When counsel calls you and acknowledges that you weren't
16 served, and offers you more time, it would seem logical for
17 you to have said, thank you, I'd like a couple of weeks to
18 file a response. But you didn't do that. You're here
19 today.

20 So, there was an inadvertent error. There's no
21 conspiracy theory here. This was a very unfortunate error.
22 Others who have filed joinders, in fact, were served. Their
23 names are listed on the certificate of service. You have
24 already told me that you had actual notice. You saw the
25 objection. You could have called my chambers. I know that

1 you know how to get in touch with chambers because you
2 contacted my chambers numerous times in order to arrange for
3 a hearing date.

4 So, if we're not going to go forward with this
5 argument today, because you're going to insist on your right
6 to file something more, then you can file something more,
7 and then one of two things is going to happen. I will
8 either take the matter under advisement and issue a ruling
9 without there being another hearing like this, or I will
10 schedule another hearing and you will have to appear in
11 person. You've now had --

12 MR. WU: Your Honor --

13 THE COURT: You've now had almost three weeks to
14 look at the arguments that were made by the Plan
15 Administrator and to think about whether or not you think
16 that you still have an argument for relief. So, what would
17 you like to do, Mr. Wu?

18 MR. WU: I would like to proceed today, Your
19 Honor.

20 THE COURT: Saying that you would like to proceed
21 today, by that, let's be very specific. By that, that means
22 that if you don't like the disposition that you get from the
23 Court and you wish to pursue your rights further on appeal,
24 that the fact that there was an inadvertent to serve you is
25 not something that you would be permitted to complain about

1 subsequently.

2 MR. WU: Yes, Your Honor.

3 THE COURT: Okay. On this record, then,
4 notwithstanding the inadvertent failure of the Plan
5 Administrator to serve Mr. Wu with the objection, we're
6 going to go forward and entertain argument on the matters.

7 Okay. So, thank you Mr. Wu. I think that's
8 helpful. So, Mr. Wu, you did file a response on June 6th,
9 correct?

10 MR. WU: Correct.

11 THE COURT: Okay. All right. Mr. Fail, I've read
12 the objection that you filed. I don't think I have any
13 questions. Is there anything more that you want to add
14 before I hear from Mr. Wu?

15 MR. FAIL: No, thank you, Your Honor.

16 THE COURT: Okay. All right. Mr. Wu, have you
17 had an opportunity to really parse through what's being said
18 in the objection?

19 MR. WU: Yes, I have.

20 THE COURT: Okay. So, well let me just take a few
21 minutes for the benefit of everybody on the phone, just so I
22 can make sure that everybody understands this.

23 At Docket 59409, there was a motion filed on
24 behalf of joint liquidators with respect to entities known
25 as LP4 and LP5. That motion essentially sought permission

1 to file a late claim with respect to certain so-called
2 exempt entities that had been dissented from the bar date
3 and were not were not required to file a proof of claim.

4 The facts and circumstances that were set forth in
5 that document were extremely unique. That's the document,
6 Mr. Wu, that you used your template for your motion. It
7 didn't require any detective work on my part. You cited to
8 that document in your pleading. And just to make clear the
9 fact that it was essentially a cut-and-paste, you refer in
10 your pleading to LP4 and LP5, which, of course, has no
11 application to your claims.

12 So, I think that you, and apparently other folks
13 who have sought to join you, saw that and thought, well,
14 there are similar securities involved. Perhaps those
15 arguments apply to you, and that you might be able to file a
16 late proof of claim. That's not correct, for any or all of
17 the reasons that are set forth in the Plan Administrator's
18 pleading.

19 First, and most importantly, your securities are
20 held -- are in a trust. And even though that trust might
21 have been listed on the exempt entities list, in fact, a
22 proof of claim that beneficially covers securities that you
23 hold.

24 I'm not even going to address the issue of when
25 you acquired the security and whether or not you acquired

1 them after the bar date. That's a whole separate set of
2 issues.

3 The other thing that seems to be unfortunate, is
4 there's a misreading of the subordination provisions. So,
5 even if there could be a proof of claim, and even if it
6 could be allowed, it's deeply, deeply subordinated to a
7 level that does not receive a distribution under the plan.

8 The guarantee of the subordinated securities,
9 which is related to the securities that you hold, the claim
10 that you hold with respect to those securities, only comes
11 into play to the extent that there is a distribution on the
12 underlined subordinated securities. There's not, because
13 those securities are lower than all unsecured claims against
14 LBHI.

15 Under the plan, pursuant to the Bankruptcy Code,
16 there is a priority of payment. Equity securities and those
17 claims that are on a parity with equity securities are not
18 entitled to receive a distribution.

19 MR. WU: Your Honor, may I?

20 THE COURT: Yes, go ahead. So, I'm struggling to
21 understand the basis on which you believe you're entitled to
22 a distribution. Moreover, the concept that these many years
23 later, it would be the right thing to do to give you
24 permission to file a proof of claim and the blanket
25 assertion that there is no prejudice is simply not true.

1 There have been precious few instances in which
2 someone has been granted leave to file a late proof of
3 claim. And your own arguments are belied by the fact that
4 you have a host of joinders, because it appears that this
5 argument has now seemed to gain some traction among folks
6 who are either in touch with you, or who have read about it.

7 But there seems to be some connectivity here with
8 people copying the same letter and sending it in as a
9 joinder. And far from being just you, Mr. Wu, there are
10 apparently a bunch of other people think that they'd like to
11 have similar relief.

12 So, in light of all that, I'm happy to hear
13 anything that you think I've gotten wrong or that the Plan
14 Administrator has gotten wrong as to why you should be
15 permitted to file a new claim, and why even if you were
16 permitted to file a new claim, under the clear provisions of
17 the plan and the securities at issue, why you think you
18 would be entitled to any distribution.

19 MR. WU: Your Honor, the guarantee was the parity,
20 and the capital trust securities which are in parity with
21 LBIE and ECAPS. That's the way I believe that's been
22 treated.

23 THE COURT: Mr. Wu --

24 MR. WU: And --

25 THE COURT: Mr. Wu, I cannot understand. This is

1 a demonstration of why folks need to come in person. I
2 cannot understand the words. I cannot understand you. So,
3 you do you're too close to your phone or you're too far from
4 your phone, or something.

5 MR. WU: I'm sorry, Your Honor. The guarantee
6 that I was referring to states that the securities that I'm
7 referring is on parity with LBIE and ECAPS. And that's when
8 (indiscernible) the liability (indiscernible) --

9 THE COURT: With LBIE?

10 MR. WU: Yes, LBIE. It's in parity -- if you look
11 at the (indiscernible) on Exhibit 8, they issued preferred
12 securities which are in parity with our capital trust. And
13 that's why I filed the motion. It's because that -- it is
14 in parity and we're entitled to the same treatment, because
15 (indiscernible) --

16 THE COURT: Hold on. Mr. Fail, maybe you're --
17 given that you're much younger than me, maybe you can
18 understand what Mr. Wu is saying, because I simply,
19 physically cannot understand what he's saying.

20 MR. FAIL: I'll attribute it to me being on the
21 better side of the speakers, rather than say anything else,
22 Your Honor. But I think what Mr. Wu is saying is that --
23 and it's what he wrote in his -- in part of his reply. He's
24 focusing on the language "parity." So, Your Honor, the
25 subordination provisions said three things.

1 THE COURT: Hold on, Mr. Fail. Let me catch up
2 with you.

3 MR. FAIL: That's okay.

4 THE COURT: So, which document of Mr. Wu's are you
5 talking about?

6 MR. FAIL: I'm referring to Document 59751, which
7 is his reply.

8 THE COURT: Okay, hold on. Let me pull that up.

9 MR. FAIL: Take your time, Your Honor. I have a
10 copy that I can hand up, if it would be helpful.

11 THE COURT: Which (indiscernible) is it?

12 WOMAN: (indiscernible)

13 MR. FAIL: It was filed on 6/6. Your Honor, may I
14 approach?

15 THE COURT: Yeah. Okay. So, Mr. Wu, I'm looking
16 at the document that you filed on June 6th.

17 MR. FAIL: And so, Your Honor, if you look --

18 THE COURT: Just -- just --

19 MR. FAIL: Apologies.

20 THE COURT: I can't let it go unsaid --

21 MR. FAIL: Okay.

22 THE COURT: -- because it's very troubling to me,
23 Mr. Wu, that you engaged in this little bit of gamesmanship
24 about today. You filed a response. You discovered you
25 hadn't been served. Mr. Fail went to the trouble of calling

1 you. It's just not the way one proceeds. It's a waste of
2 everyone's time.

3 That being said, I'm considering your objection on
4 the merits. So, Mr. Fail --

5 MR. FAIL: An example of the quote is on Page 2 of
6 the --

7 THE COURT: Page 2.

8 MR. FAIL: -- of that reply, at the very top, Your
9 Honor.

10 THE COURT: Yeah.

11 MR. FAIL: It's a -- it purports to be a quote
12 from the guarantee subordination section. And so, it
13 describes that the guarantee --

14 THE COURT: Yeah?

15 MR. FAIL: -- will cost acute and unsecured
16 obligation of LBHI that ranks --

17 THE COURT: Right.

18 MR. FAIL: -- one, subordinate, as Your Honor
19 pointed out --

20 THE COURT: Right.

21 MR. FAIL: -- to the rights of all other general
22 unsecured creditors.

23 THE COURT: Right.

24 MR. FAIL: Second, parity -- so, it's one, two and
25 three -- on parity with the most preferred -- most senior

1 preferred or preference stock, now or hereinafter issued by
2 LBHI --

3 THE COURT: Right.

4 MR. FAIL: -- which is consistent with what Your
5 Honor had said and what --

6 THE COURT: Yeah.

7 MR. FAIL: -- the Debtor said. But also, with any
8 guarantee --

9 THE COURT: Right.

10 MR. FAIL: -- by LBHI in respect to preferred
11 securities of any affiliate of HI.

12 THE COURT: Right.

13 MR. FAIL: Mr. Wu is suggesting that there were
14 affiliates that LBHI guaranteed, and apparently some -- but
15 he hasn't described or listed any guarantee of any preferred
16 securities from an entity that would rank differently. But
17 he's saying there were solvent entities -- he's quoting LBHE
18 as an example, and then he throws in ECAPS, but those
19 weren't guaranteed.

20 And he's saying, therefore, that makes it somehow
21 higher. But then let's just look at 3, just to complete it,
22 senior to LBHI common stock. So, it's below GUCs --

23 THE COURT: Right.

24 MR. FAIL: -- above common, and we're saying
25 preferred.

1 THE COURT: Right.

2 MR. FAIL: And so, for example, he has claims in
3 four trusts, Capital Trusts he's alleging he has claims.

4 THE COURT: Right.

5 MR. FAIL: So, this language, Plan Administrator
6 believes, means that his Capital Trust 4 or 5, 6 -- 3, 4, 5,
7 6, they're all the same, because this language is in all of
8 the prospectuses.

9 THE COURT: Right.

10 MR. FAIL: He's suggesting that there was a
11 guarantee, an undisclosed -- he has the burden, but he
12 hasn't met it. He's saying somehow this language gives him
13 a general unsecured claim because notwithstanding being
14 junior to all other GUCs, this middle paragraph focusing on
15 the word parity gives him parity with some other guaranteed
16 claim, of which I'm not aware, that has been allowed.

17 And that's -- Your Honor, that's his argument. I
18 can't do it any more justice than that. Again, Mr. Wu, you
19 know, if I misstated it, please -- it's your argument.

20 MR. WU: Your Honor --

21 THE COURT: Mr. Wu, these securities are junior to
22 all unsecured claims. There was --

23 MR. WU: (indiscernible)

24 THE COURT: -- a proof of claim filed that
25 represents your claim, in essence.

1 MR. WU: But that would not fall under the
2 guarantee, Your Honor --

3 THE COURT: It doesn't matter.

4 MR. WU: -- because --

5 THE COURT: It doesn't matter. The guarantee
6 only is as good -- the guarantee is only as good as the
7 underlying claim. The underlying claim was filed. The
8 underlying claim was allowed. The underlying claim was
9 subordinated.

10 MR. FAIL: And additionally, Your Honor, as we
11 pointed out, it was equivalent to a bad boy guarantee. It
12 wasn't in addition. It said, if LBHI --

13 THE COURT: Right.

14 MR. FAIL: -- paid the trust and the trust didn't
15 pay it out, LBHI would make --

16 THE COURT: Exactly.

17 MR. FAIL: -- good under the same priority.

18 THE COURT: Right. Exactly.

19 MR. FAIL: Which case has not occurred, as Your
20 Honor --

21 THE COURT: No.

22 MR. FAIL: -- has pointed out.

23 THE COURT: Mr. Wu, when did you acquire these
24 securities? When did you acquire your claim?

25 MR. WU: It's on and off, but the current

1 (indiscernible) are between 2013 and I would say 2019. So,
2 that's (indiscernible) 2011.

3 THE COURT: You've been what since 2011?

4 MR. WU: You know, I bought a few and sold a few
5 since 2011. But --

6 THE COURT: Did you buy them after the bar date?

7 MR. FAIL: Not these bonds, Your Honor. I think
8 he's saying --

9 MR. WU: Yes.

10 MR. FAIL: -- he's bought other bonds. The claims
11 -- Your Honor, I think what he's saying is the claims that
12 he's holding and the claims that he's asserting now he
13 bought between 2013 and some in 2019. Separately and apart,
14 he bought and sold some securities in Lehman Brothers, but
15 that they're not relevant today since 2011, is what I heard.

16 MR. WU: (indiscernible)

17 MR. FAIL: Subsequent to the bar date, though,
18 Your Honor.

19 MR. WU: Yes. Those securities were bought after
20 the bar date. The ones I (indiscernible) are from 2013 to
21 currently.

22 THE COURT: I mean, that in and of itself
23 precludes you from raising any of these issues. You can't
24 come into a case after a bar date has passed when the seller
25 -- whoever sold you your claim or your security has been

1 subject to a bar date and did or did not act. Then you
2 don't get to come in, as was done in the case in the motion
3 that you copied from, and say, well, there was no way I
4 could have filed a claim at the time because the partnership
5 was dissolved, et cetera, et cetera.

6 There was a claim. It was subject to a bar date.
7 It filed or it didn't file. It was in fact here covered by
8 a proof of claim that was filed on behalf of the beneficial
9 holders. You then bought the security. You bought it warts
10 and all. You don't get to resurrect a bar date or get
11 greater rights than the person who was subject to the bar
12 date. So, you bought that security as you found it.

13 Even if that were not the case, it's six years
14 later. You are obviously inspired by this motion, which is
15 a completely different circumstance. And your reading of
16 the prospectus is incorrect in terms of your interpretation
17 of how the subordination and the ranking, if you will, of
18 the guarantee.

19 MR. WU: Your Honor, may I?

20 THE COURT: Go ahead.

21 MR. WU: You know, within the guarantee, you know,
22 it was written -- within the prospectus, it was written so
23 that if the Trustee does not bring the enforcement. In
24 fact, even the original holders can't bring enforcement of
25 the guarantee.

1 THE COURT: Mr. Wu --

2 MR. WU: Which is what we --

3 THE COURT: Lehman's a big bankruptcy. There was
4 a process. There were trillions of dollars of claims. It
5 was managed for the first five years by Judge Peck. It's
6 been managed by me since he retired. There were bar debts.
7 There were deadlines.

8 The concept that somebody who's trading in these
9 claims can come in in 2019 and get authority to file a new
10 claim, after having voluntarily traded into the position, is
11 a non-starter. Even if we get beyond that, there was a bar
12 order. There was a proof of claim that was filed that
13 covers the proof of claim that you would file if I were to
14 give you permission, which I'm not going to.

15 That proof of claim does not entitle anyone to
16 recover any cash money from Lehman. And that's because the
17 securities are subordinated below general unsecured claims,
18 which as of now, the recoveries are about 40 cents on the
19 dollar.

20 So, for four or five different reasons, you are
21 not entitled to any relief, and you are not entitled to any
22 recovery from the Lehman estate. And the same is true with
23 respect to all of the persons who filed identically for the
24 joinders.

25 So, I'm going to ask -- it appears on my control

1 panel that someone wants to be heard.

2 MR. GREGORY: Your Honor, this is Ricky Gregory
3 speaking. I've been working very closely with Mr. Wu on his
4 motion. And basically, due to the fact that the ECAPS
5 general partner was taken off the register of companies in
6 London, did not have a voice from June 2010 --

7 THE COURT: Mr. Gregory, ECAPS --

8 MR. GREGORY: (indiscernible) go ahead.

9 THE COURT: Mr. Gregory --

10 MR. GREGORY: Yes.

11 THE COURT: ECAPS has nothing to do with this.

12 MR. GREGORY: Let me make the link (indiscernible)
13 for you.

14 THE COURT: ECAPS has --

15 MR. GREGORY: Can I make the link? Can I make my
16 statement for you very quickly? Basically, LBH PLC has their
17 subordinate notes for Partnerships 1, 2 and 3 guaranteed by
18 the Board of Directors' June 9, 2005 global guarantee.

19 A clause in the prospectus for (indiscernible)
20 states that we are parity with any guarantee for any
21 affiliate --

22 THE COURT: Okay. Mr. Gregory --

23 MR. GREGORY: Go ahead.

24 THE COURT: Mr. Gregory --

25 MR. GREGORY: I'm listening.

1 THE COURT: Do you have a motion on file?

2 MR. GREGORY: I filed a joinder with Mr. Wu. And
3 I also stated that I would support what he had in his
4 joinder.

5 THE COURT: Okay. Are you in --

6 MR. GREGORY: In addition to what I filed in my
7 joinder.

8 THE COURT: Excuse me, Mr. Gregory. I'm getting
9 close to cutting you off the line. You're not an attorney.
10 You don't have a motion on file. This is not friends and
11 family.

12 MR. GREGORY: I joined Rex, a motion with a
13 joinder.

14 THE COURT: Finish your statement, Mr. Gregory.

15 MR. GREGORY: LBH PLC subordinate notes for
16 Partnerships 1, 2 and 3 were guaranteed by the global
17 agreement that was created by the Board of Directors on June
18 9, 2005. If you look at the Capital Trust prospectus, it
19 states that the holding companies, which is LBHI's Capital
20 Trust securities, or parity with any guarantee issues for
21 any affiliate, it's a fact that the Capital Trust of the
22 (indiscernible) securities. It's a fact that the enhanced
23 Capital Preferred Securities issued by Partnerships 1
24 through 5 are preferred securities. It's a fact that the
25 general partner is an affiliate of LBHI.

1 So, in reading the language of the prospectus,
2 basically the Capital Trust inherits the same guarantee,
3 that global guarantee, that the ECAPS has. And that creates
4 a current liability.

5 Now, I didn't become aware of this until Docket
6 58763 was filed on August 27, 2018. It was a letter from
7 Mr. Fail that has a copy of the claims for Partnerships 1,
8 2, 3, 4 and 5, the ECAPS. And it also talks about how the
9 Lehman Brothers Special Financing guaranteed swap claims for
10 the (indiscernible) agreement for Partnerships 3, 4 and 5
11 are also guaranteed by the global agreement, even though the
12 Capital Trusts do not have a claim with Lehman Brothers
13 Special Financing, we still have a parity with the guarantee
14 for Lehman Brothers Special Financing.

15 I also have a Docket 46304 that was filed on
16 September 13th, 2014, where I mention this when they were
17 going to make a -- when they were going to pay out the
18 disputed claims, the Lehman Brothers Commercial Corporation
19 and Lehman Brothers Special Financing. But I was basing it
20 in 2014 upon the J.P. Morgan guarantee for their September
21 agreement.

22 I was not aware back in 2014 that the ECAPS had
23 their subordinate notes for Partnerships 1, 2 and 3
24 guaranteed by the global agreement. If you look at the
25 prospectus for the Capital Trust, if we're not paid anything

1 by LBHI, basically LBHI, according to the prospectus, will
2 divide up the subordinate debenture into 25-dollar units and
3 issue them to the holders of the Capital Trust.

4 When you look at the finance -- FINRA --
5 (indiscernible) Financial Industry Regulatory Authority and
6 the SEC, any holder who purchased these securities, since
7 they're still trading, is the holder as if they bought them
8 from day one. Otherwise, it's fraud for these securities to
9 be trading if we're not the legitimate holders.

10 If a payment is ever made out, it's going to be
11 paid out through the Bank of New York Mellon. The Bank of
12 New York Mellon is going to pay the holders of record, which
13 is us. The Bank of New York Mellon is the Trustee for the
14 ECAPS, and it's the Trustee for the Capital Trust securities
15 as well.

16 THE COURT: Mr. Fail?

17 MR. FAIL: Thank you, Your Honor. There was a lot
18 in that that, if you'd like, I can try to respond to. At
19 the beginning of the colloquy attempted to -- it was a
20 discussion about what have been referred to as ECAPS, as
21 Your Honor has identified, separate trusts, perhaps some
22 similarities.

23 Your Honor will recall, and for Mr. Gregory's
24 benefit, the ECAPS -- certain ECAPS held subordinated debt,
25 not issued like the (indiscernible) ones here by LBHI, but

1 issued by Lehman Brothers Holdings, PLC, an entity in
2 Europe. It held (indiscernible) from PLC. It came with a
3 guarantee, a subordinated guarantee, from LBH PLC. Similar
4 regulatory purposes to be treated subordinate.

5 Mr. Gregory also referred to, I believe, a 2005
6 written consent by the Board of Directors of LBHI that have
7 been referred to from time to time as the corporate
8 resolution. We've discussed that in numerous pleadings,
9 Your Honor, and I believe Your Honor referred to it in her
10 recent decision with SRM.

11 That guarantee has been argued that it guaranteed
12 the obligations, certain obligations, from PLC. Mr.
13 Gregory, and perhaps Mr. Wu, are trying to now say somehow
14 that this written consent gives a non-subordinated guarantee
15 because HI allegedly guaranteed PLC, which guaranteed
16 something else.

17 That argument fails by Mr. Gregory's admission
18 that he found out about the unanimous written consent on
19 August 2018, eight years after the bankruptcy and seven
20 years after the bar date.

21 THE COURT: So, what you're referring to is the
22 law that's clear and that I set forth in the recent SRM
23 decision, which I wouldn't charge Mr. Gregory or Mr. Wu with
24 being aware of. But the law is that when there is a general
25 guarantee, as opposed to a specific guarantee, and corporate

1 resolution is a general guarantee, it's necessary to show
2 that one acted in reliance -- with knowledge of and in
3 reliance on the general guarantee. So, by definition,
4 that's not the case here.

5 THE COURT: It's impossible for Mr. Wu, who didn't
6 purchase it pre-petition. It was known to be impossible by
7 Mr. Gregory's admission. And certainly, the prospectus
8 which -- we've covered this in prior objections, perhaps
9 before Your Honor's taking over the case, or perhaps after -
10 - the prospectus and documents make it very clear that the
11 only guarantee issued was the limited one, the only
12 guaranteed issued here that's relevant. It's the very
13 limited, very subordinated guarantee of LBHI.

14 So, I think I was able to explain and put together
15 -- there were other discussions of Mr. Gregory's prior
16 filings. He referred to two different things, I think,
17 including a long time ago when we made a -- we did an
18 advance -- to advance money for distributions, I think we
19 did a substitution, Your Honor, with reserves that were held
20 for the J.P. Morgan litigation. I mean, Mr. Gregory filed a
21 statement then that was irrelevant, and I don't think it's
22 relevant here.

23 So, I'm happy to answer any further questions or
24 respond. But nothing in the joinders, nothing in the
25 motion, nothing articulated today by the movant or joinder

1 change the Debtors' position -- the Plan Administrator's
2 position, Your Honor.

3 THE COURT: All right. Thank you. All right,
4 there were a number of other documents that were filed by
5 Julie (indiscernible), Dan (indiscernible), (indiscernible)
6 Ms. Elizabeth Harrison. There were also a couple of
7 objections that were filed to the timing of the early
8 distribution.

9 MR. FAIL: Would you like me to address those --

10 THE COURT: Well, let me take a shot first. Mr.
11 Wu, you filed at 59772 an objection to the timing of the
12 early distribution. I don't know what you're talking about.
13 There's not an early distribution.

14 MR. FAIL: Well, Your Honor, maybe just -- it has
15 not been presented yet. If Your Honor -- can I...?

16 THE COURT: Sure.

17 MR. FAIL: Thank you very much. So, on June 7th,
18 so earlier this month, at Docket 59756, it is not related to
19 the motion before Your Honor today --

20 THE COURT: Right.

21 MR. FAIL: -- so we don't expect that you would be
22 aware.

23 THE COURT: Yeah.

24 MR. FAIL: We filed a motion seeking permission to
25 do a supplemental distribution.

1 THE COURT: Yes.

2 MR. FAIL: Okay.

3 THE COURT: Yeah.

4 MR. FAIL: And so, what it requested was to set a
5 record date of, I believe --

6 THE COURT: Uh huh.

7 MR. FAIL: -- okay -- the 17th. And so, what
8 these parties are objecting to is the fact that they did not
9 have an allowed claim. So, if Your Honor were to grant
10 their motion, then they would be allowed to have a claim,
11 but it wouldn't receive a distribution.

12 The Plan Administrator's position, if Your Honor
13 would address it while the parties are on the phone for
14 judicial ease, is to the extent that Your Honor denies the
15 motion, we request that Your Honor overrule these objections
16 such that we could present, subject to any other new novel
17 arguments made -- that we would be able to present without
18 an additional hearing on the subsequent motion.

19 The sole basis for the objection to LBHI and other
20 Debtors making a distribution is that these parties on the
21 telephone today wouldn't be included if Your Honor granted
22 them permission to have claims. And again, I'm happy to
23 answer any further questions.

24 THE COURT: Yeah, there was just -- there was some
25 sense -- and there's been such a flurry of documents filed,

1 all that basically say the same thing. I can't put my
2 finger on it now, but there was some suggestion in one of
3 the documents that this was part of some grand scheme, that
4 the record date was set in connection with the hearing dated
5 this motion, and that it was designed to cut off the rights
6 of these persons. That's a pure fabrication.

7 MR. FAIL: We think so, Your Honor.

8 THE COURT: So, you know, again, there's a --
9 something that emerges from these pleadings that I find very
10 troubling, which is to say that folks seem to be reinforcing
11 each other's views of this situation in ways that are just
12 not tethered to the facts and the operative plan documents.

13 Mr. Wu, do you have anything else you want to add?
14 We have to wrap this up.

15 MR. WU: I do not, Your Honor.

16 THE COURT: I'm sorry. Who was just speaking?

17 MR. WU: I do not, Your Honor.

18 THE COURT: Okay. That was you, Mr. Wu?

19 MR. WU: (indiscernible)

20 MR. GREGORY: Your Honor?

21 THE COURT: Okay. Is there anyone else on the
22 phone who'd like to be heard?

23 MR. GREGORY: Yes. I would like to be heard, Your
24 Honor.

25 THE COURT: Okay. Go ahead, Mr. Gregory. The SEC

1 has ruled whereby if you purchase these securities, you own
2 them as though you own them from day one, and you have
3 standing. Well, it should be considered fraud for these
4 securities to still trade if the prospectus cannot be
5 honored --

6 THE COURT: Well, Mr. Gregory --

7 MR. GREGORY: -- according to the parity rules --

8 THE COURT: I'm not going to --

9 MR. GREGORY: Go ahead.

10 THE COURT: Mr. Gregory, I'm going to engage you
11 in a detailed discussion of what the SEC has or has not
12 said. I will tell you that as far as I'm aware people trade
13 in all sorts of securities that range from worthless to
14 entirely worthless to worth a few pennies to let's see who
15 you sell it to for another penny.

16 This is a bankruptcy case that was conducted
17 pursuant to the rules of this Court, Federal Rules of Civil
18 Procedure as adopted and incorporated into the bankruptcy
19 rules according to the Bankruptcy Code under the glare and
20 spotlight for years and years and years.

21 It resulted in a plan of reorganization. The plan
22 of reorganization contemplated a bar date and an orderly
23 process for the consideration of claims. That's what has
24 occurred here.

25 In fact, this case is coming to its conclusion.

1 The law and the orders of this Court need to be upheld and
2 given their plain and clear meaning. It's not an endless
3 round of people diving into these very complicated documents
4 and coming up with new and novel theories. If you bought a
5 security based on your belief and understanding of what the
6 security entitled you to, that's your business.

7 Lehman Brothers is not in the business now and has
8 not in the business since September of 2008, of minting
9 securities. Mr. Fail, am I wrong?

10 MR. FAIL: No, Your Honor.

11 THE COURT: Okay. Claims trade, securities trade
12 -- it's not within this Court's control and, frankly, it's
13 not within the Lehman Brother's plan administrator's
14 control.

15 Once again I will say, and this constitutes a
16 ruling, that the plan administrator -- and I don't often say
17 this, and Mr. Fail, you've been around a lot, the plan
18 administrator prevails sometimes, sometimes the plan
19 administrator spectacularly doesn't prevail. As I
20 understand it there's an argument in the Second Circuit next
21 week in a billion dollar matter in which this Court ruled
22 against the plan administrator.

23 So, for the benefit of the folks on the phone I
24 want to make it perfectly clear. Plan administrator
25 prevails sometimes and the plan administrator doesn't

1 prevail sometimes. There is no Lehman. There is only a
2 plan administrator collecting assets and liquidating claims
3 and sending out distributions for the benefit of creditors.

4 This exercise has cost creditors money. If these
5 pleadings had been filed by lawyers there would be a
6 reasonable basis for me to entertain a motion for sanctions.
7 Under Rule 9011 of the Federal Bankruptcy Rules, it's
8 important, it's obligated that you make diligent inquiry
9 into the facts of the law governing any pleading you file in
10 the Court.

11 Mr. Fail has repeated today many of the arguments
12 that were laid out in the plan administrator's brief. I'll
13 repeat them again for your benefit.

14 This is not like the situation in the pleading
15 from which Mr. Wu, you copied your objection. In this case
16 in fact, the indenture trustee for these securities filed a
17 proof of claim. The beneficial interests and the individual
18 holders of the securities were represented by \$1 billion in
19 allowed claims against the estate. So, that's one reason
20 why Mr. Wu, you cannot prevail.

21 Secondly, as has been made clear, you acquired
22 these positions after the bar date, so that places you in a
23 whole separate category.

24 Under the test for filing a new proof of claim,
25 I've heard nothing today that would provide a basis for me

1 to give you leave to file a new claim. There are no new
2 facts. The simple statement that there would not be
3 prejudice has been undermined by, among other things, the
4 many joinders that have been filed to your motion indicating
5 that there are folks out there who should -- the relief
6 requested -- I grant -- your request would be granted by the
7 Court would start filing claims and the notional amount of
8 these securities is very large. Who knows how many claims
9 there would be.

10 But perhaps most importantly, your reading of the
11 prospectuses is flawed. Your reading of the prospectuses is
12 flawed. Under any scenario any claim that you have would be
13 subordinated to general unsecured claims and is not entitled
14 to a distribution under the plan.

15 So, for those reasons, and as more fully explained
16 in the objection filed by the plan administrator, and I
17 don't often say this because I don't often agree with
18 everything the plan administrator says, I agree with all of
19 the points made in the plan administrator's objection.

20 So, for all the reasons I'm going to deny Mr. Wu's
21 motion and to the extent that the joinders believe or are
22 taking the position that their joinders constitute separate
23 motions, those joinders/motions are also denied.

24 The objection with respect to the timing of the
25 so-called record date in early distribution, that's been

1 raised by Mr. Wu and by one or more of the joining parties,
2 that too is denied.

3 So, Mr. Fail, I'm going to ask that you prepare an
4 order. As a courtesy if you would circulate it to Mr. Wu
5 and to the other joining parties and then send it to
6 chambers. We'll enter the order. The order should reflect
7 my ruling and indicate that for the reasons more fully
8 described on the record of the hearing.

9 Mr. Wu, for your benefit and the benefit of the
10 other parties who are appearing here without lawyers, once
11 that order is entered that order can form the basis of the
12 exercise of any appellate rights that you wish to exercise.

13 Transcript of these proceedings can be obtained
14 should you wish to get a copy. Do you have any questions,
15 Mr. Wu? Okay. All right, I think that's all we have. Mr.
16 Fail, is there anything else I need to think about today?

17 MR. FAIL: No, Your Honor. Thank you, again, and
18 thank your chambers for the time and attention that you've
19 given to the matter.

20 THE COURT: Okay. All right, thank you folks.
21 Enjoy the rest of your day.

22
23 (Whereupon these proceedings were concluded at
24 12:09 PM)

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya Ledanski
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Date: June 21, 2019

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